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09/828,601	04/06/2001	Steven L. Eikenberg	USAM117030	5690
27370 7590 05/20/2008 OFFICE OF THE STAFF JUDGE ADVOCATE U.S. ARMY MEDICAL RESEARCH AND MATERIEL COMMAND ATTN: MCMR-JA (MS. ELIZABETH ARWINE) 504 SCOTT STREET FORT DETRICK, MD 21702-5012			EXAMINER BUMGARNER, MELBA N	
			ART UNIT 3732	PAPER NUMBER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEVEN L. EIKENBERG

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Appeal 2007-0076  
Application 09/828,601  
Technology Center 3700

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Decided: May 20, 2008

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Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and ANTON  
W. FETTING, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-10 and 18-21. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented a portable dental treatment system (Specification 1).

Claim 1 under appeal reads as follows:

1. A portable dental treatment system comprising:

at least one dental bracket table;

at least one portable base unit including at least one suction pump and a waste container;

at least one suspension device couplable between said at least one dentalbracket table and said at least one portable base unit, said at least one suspension device structured to allow a dental patient chair to be positioned substantially below said at least one dental bracket table.

The Examiner rejected claims 1-4, 6, 7, 10, and 18-21 under 35 U.S.C. § 103 as being unpatentable over Seidman in view of Bailey.

The Examiner rejected claim 5 under 35 U.S.C. § 103 as being unpatentable over Seidman and Bailey and further in view of Hoffmeister.

The Examiner rejected claim 8 under 35 U.S.C. § 103 as being unpatentable over Seidman and Bailey and further in view of Jones.

The Examiner rejected claim 9 under 35 U.S.C. § 103 as being unpatentable over Seidman and Bailey and further in view of Beier.<sup>1</sup>

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Seidman	FR 2233032 A	Feb. 14, 1975
Jones	US 4,114,274	Sep. 19, 1978
Hoffmeister	US 4,445,859	May 1, 1984
Beier	US 4,571,182	Feb. 18, 1986
Bailey	US 5,013,240	May 7, 1991

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<sup>1</sup> The rejection of claims 1-10 and 18-21 under 35 U.S.C. § 112, first paragraph has been withdrawn (Answer 5).

Appellant contends that Seidman does not disclose a portable dental treatment system.

## ISSUE

Whether the Appellant has shown that the Examiner erred in finding that Seidman discloses a portable dental treatment system.

## FINDINGS OF FACT

Appellant's invention relates to portable dental treatment systems (Specification 1). Appellant defines a portable dental treatment system as a dental treatment system which has "been designed such that they [the system] can be compacted and bundled so that a relatively fit person (e.g., a man or a woman) can physically carry the portable dental system." *Id.* The advantage of such a portable dental treatment system is that the system can be used in environments to treat, for example, military personnel located in the jungle or in underdeveloped countries that may not have sufficient power and/or sewer facilities sufficient to support and maintain fixed dental treatment systems (Specification 1-2).

Seidman describes a dental treatment system which includes a cabinet 6 and a suspension device (arms 7, 8) which is connected to a dental bracket table (case 1) (Figure 1). The dental table 1 and suspension device 7, 8 allow a dental patient chair to be positioned substantially below the dental table 1. The cabinet 6 may be a mobile cabinet (Page 4; Figure 1). Seidman does not disclose that the cabinet can be compacted and bundled so that a relatively fit person can physically carry the portable dental system.

Dictionary.com defines portable as: capable of being transported or conveyed or easily carried or conveyed by hand.

In each of the Examiner's rejection, the Examiner relies on Seidman for teaching a portable dental system.

### ANALYSIS

We will not sustain the rejection because Seidman does not disclose a portable dental treatment system. The issue in this case is what the term "portable" in the claims mean. A claim construction analysis begins with the words of the claim. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). The presumption will be overcome where the patentee, acting as his own lexicographer, has set forth a definition for the term different from its ordinary and customary meaning or where the patentee has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope. *Brookhill-Wilk*, 334 F.3d at 1299. Our reviewing court has established that the words in claims should be defined as they are disclosed in the specification before resorting to their dictionary definitions, *Phillips v. AWH Indus.*, 415 F.3d 1303, 1326 (Fed. Cir. 2005) (*en banc*).

In the instant case, the Appellant has clearly conveyed in the Specification on page 1 that term "portable" as it relates to the dental system of the claims relates to a dental system that can be compacted and bundled

so that a relatively fit person can carry the system. In addition, Appellant's definition of portable is also one of the customary and ordinary meanings as demonstrated by Dictionary.com.

Seidman does not disclose a dental system that can be compacted and bundled so that a relatively fit person can carry the system.

As Seidman is relied on for teaching a portable dental system in each of the Examiner's rejections, we will not sustain any of the Examiner's rejections.

#### CONCLUSION

The decision of the Examiner is reversed.

REVERSED

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